

September 15, 2016  
Commission's Secretary  
Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554  
Deena Shetler: deena.shetler@fcc.gov  
FCC Contractor: fcc@bcpiweb.com  
Re: WC Docket No. 06-210  
CCB/CPD 96-20

### **ADDITIONAL DECLARATORY RULINGS**

**Of 800 Services, Inc. and Winback & Conserve Program, Inc., 800 Discounts, Inc., One Stop Financial, Inc. and Group Discounts, Inc.**

**BASED ON & RELIANCE UPON COMMENTS IN CASE 06-210**

My firm is counsel for 800 Services, Inc. owned by Mr. Phillip Okin. My firm is also counsel for One Stop Financial, Inc., Winback & Conserve Program Inc., 800 Discounts, Inc., and Group Discounts, Inc. herein further referred to as the "Inga Companies" as the 4 companies as owned by Mr. Inga.

The above 5 petitioners are filing the following declaratory ruling request based upon the non-disputed facts outlined within these comments.

The following declaratory ruling request was made on June 23, 2016 and AT&T did not comment within the Commissions Public Notice period for comments and reply comments.

This was labeled as Declaratory Ruling Number IV in the June 23, 2016 Declaratory Ruling Request. We will label it as Declaratory Ruling Request VIII now so as not to confuse it with what is now labeled as IV. The background on this request is indicated within the June 23, 2016 Filing:

### **Declaratory Ruling VIII**

“Did AT&T violate its Tariff Number 2 by inflicting termination charges on the 4 Inga Company plans in June 1996 and 800 Services, Inc.’s plan in September 1995 that were CSTPII/RVPP (EBO) plans that were under 3 year commitments considering the non-disputed fact and AT&T’s own concession that these plans were never terminated by the 5 petitioners.”

---

### **Background for Declaratory Ruling IX**

The **non-disputed facts** show that when AT&T totally shut down section 2.1.8 petitioners attempted to transfer locations without the plan under 3.3.1Q Bullet 4. AT&T’s Counsel Charles Fash on July 7<sup>th</sup> 1995 asserted that section 2.1.8 did not allow traffic only transfers and the proper methodology to move traffic was 3.3.1. Q bullet 4 (delete and Add). However, Counsel Charles Fash stated that even if the proper mechanism was used AT&T would not process a substantial account movement transaction based upon section 2.2.4 fraudulent use. Therefore, petitioners request the Commission to address this additional declaratory ruling request:

## Declaratory Ruling Request IX

"On July 7, 1995 AT&T counsel Charles Fash advised petitioners that AT&T was denying use of section 3.3.1.Q Bullet 4 (delete and add) for substantial account movements, based upon section 2.2.4 fraudulent use. Did AT&T's Tariff No 2 allow AT&T to prohibit a 3.3.1.Q bullet 4 transaction based upon 2.2.4 fraudulent use as 3.3.1.Q bullet 4 was not conditioned upon first having to meet the standards of "fraudulent use?" If AT&T was allowed to rely upon 2.2.4 fraudulent use did AT&T use an illegal remedy under 2.8.2 "Interference, Impairment or Improper Use," by permanently denying instead of temporarily suspending the 3.3.1.Q bullet 4 transaction?

## Declaratory Ruling Request X Background

Section 2.5.7 of AT&T's Tariff No 2 allows an AT&T customer to avoid shortfall charges due to circumstances beyond the customer's control. Exhibit II in petitioners 1<sup>st</sup> filing in 2006.

NAME: [REDACTED] and [REDACTED]  
Bridgewater, NJ 08807  
Issued: July 12, 1993

5th Revised Page 27  
Cancels 5th Revised Page 27  
Effective: July 20, 1993

2.5.7. Extension of Term Commitments - The failure of a Customer to meet usage or revenue commitments during a term commitment shall be excused to the extent such usage or revenue shortfall is caused by strike, governmental orders, acts of war, civil commotions, insurrection, acts of God or other such circumstances beyond the Customer's control; provided that, if the condition causing the shortfall ceases, the Customer satisfies that usage or revenue shortfall during an extension of its original term commitment. For this purpose only, a Customer may extend its original term commitment for the period of time they are unable to meet the commitment under the circumstances described above for a period not to exceed one year. If, at the end of the extension period the Customer is still unable to meet its commitment, the Customer may subscribe to a new term plan with a reduced commitment level commensurate with the Customer's reduced revenue generation capability. The new term plan subscribed to under this clause must be at least the same term length as the original term plan. In order to be eligible for this provision, the inability of the Customer to meet its commitment must not have been caused by moving 800 service usage from AT&T to a non-AT&T carrier, and the Customer must notify the Company in writing within ten days of the onset of the circumstance relied upon to excuse the shortfall and request the term extension.

Sx

Sx  
Cy  
Sx  
Sx

x Material filed under Transmittal No. 5415 is scheduled to become effective on July 20, 1993.  
y Issued on not less than five days' notice under authority of Special Permission No. 93-86.

Printed in U.S.A.

See exhibit JJ in petitioners initial filing in 2006:

AT&T COMMUNICATIONS  
Adm. Rates and Tariffs  
Bridgewater, NJ 08807  
Issued: August 28, 1996

*LSTP moves to  
CSTP w/o  
penalty*

TARIFF F.C.C. NO. 2  
20th Revised Page 61.5.2  
Cancels 19th Revised Page 61.5.2  
Effective: August 29, 1996

**3.3.1.N. AT&T 800 Term Plan-Location and Service Specific (continued)**

**3. Cancellation or Discontinuance of AT&T's 800 Term Plan-Location and Service Specific-Without Liability** - The Customer may Cancel or discontinue this term plan prior to the expiration of the 3 year term without liability when:

- Notice of cancellation of the term plan order is received before the last day of the current month, i.e., term plan order is received January 3, cancellation of the order notice must be received before January 31.
- The Customer orders a new AT&T 800 Term Plan from the Company with a revenue commitment equal to, or exceeding, the original commitment or subsequently moves the AT&T 800 Service traffic to another AT&T Term Plan of equal or greater value. Discontinuance of the former term plan, and initiation of the 'new' term plan must be done concurrently.

↑

Dear Ed:

MAY 24th/letter

Mr. Larry Shipp as of yesterday has informed me that AT&T account manager Andrea Anton was given a question by the legal department as follows: "Where do you want the shortfall penalty assessed, on your main bill or on all the end-users' accounts under the plans?" This question is akin to "When was the last time you beat your wife?"

Mr. Shipp has told Ms. Anton that no shortfalls are to be applied, so her most presumptuous question is of course irrelevant.

Before you go ahead and actually place these illusionary charges, where no service was ever provided on these plans I will document for the court the following facts; which you are not at this time aware of, but soon will be, so as you may make a more educated decision before delivering the final death blow.

I am aware that you must now start placing the penalty on the plans account(s) in the end of May so it shows up for your unilateral announcement that the penalty will show up on the June '96 invoice(s).

Since however you will not get to start reading the transcripts of the audio tapes before you go ahead with your decision to place the fictitious penalties I am advising you of the following.

The audio tapes clearly indicate that restructures are common at AT&T; that no penalties are assessed on restructures, no matter how many times after June 17, 1994 they are restructured.

The tapes clearly show that since April of 1994 we have not been allowed to take in end-user accounts who have a term contract on the plan, because restructures were treated as not being a new plan. As you are aware if restructures were considered a new plan we would have been able to bring in those end-users onto our plan without penalty.

Since 80% of the market place volume is on a term contract, this decision by your entire business department to preclude us from marketing to all of these customers along with several other factors has led to "theoretical shortfall." Thus we have been forced to restructure due to AT&T's own fault.

Therefore, if what the AT&T legal department says is true that restructures are new plans then what is also true is that AT&T has illegally precluded us from marketing to 80% of its customers for over two years!!

You will hear on the tapes that the attorneys in the AT&T legal department are now the only ones at AT&T who believe that restructures are new plans. Your own in house counsel Mr. Charles Fash had agreed that restructures were not new plans, and that once a plan was Grandfathered it remained Grandfathered! This was earlier demonstrated when Andrea Anton worked with him in deciding that we properly restructured on time to avoid the "non service provided" penalties.

It was only after you and Mr. Whitmore had to "re-educate" Mr. Fash and Ms. Anton that their story has now changed.

The audio tapes show that the following AT&T business managers statements and practices clearly determine that restructures are not new and no penalties can be assessed: Ron Orem, Joe Fitzpatrick, Maria Nascimiento, Thomas Freeberg, Joyce Suek, Lisa Hockert, Janis Bina, Deb Kibby, Anne Johnson, Patti Van Vickie, Tom Umholtz, and Greg Brown.

Even the AT&T legal department itself never made the ridiculous argument in over a year before the courts that a grandfather pre-June 17, 1994 plan that restructured somehow becomes un-grandfathered until AT&T's 2nd brief to the Court of Appeals, on May 1, 1996.

7) The tapes also make it clear that I had a valid reason to invoke Section 2.5.7 Extension of Term Commitment, due to circumstances beyond the customer's control. Even if AT&T rejected the restructuring argument, AT&T could not place penalties on these plans because I placed all of these plans under 2.5.7 on June 5, 1995, and was never denied. AT&T in all of its brief also never denied that 2.5.7 would not apply. The tapes also reveal that all the accounts on a plan can be moved without the plans' liabilities moving also.



Now that you will be shortly receiving knowledge of how your entire business operations have been run, I would expect that you at least postponed your decision to inflict penalties until after you listen to all of the tapes of your people.

To mistakenly place non-service provided penalties on either our main bill or on the thousands of innocent end-users without carefully weighing all the facts will not, in our opinion, be looked upon by the court too favorably.

It would be quite absurd for AT&T who has demanded that they have the transcripts of these tapes to now proceed with fictitious non-service provided penalties without carefully reviewing all the tapes.

The tapes will show that AT&T has made misrepresentations to us, Judge Politan, The Appeals Court, and the FCC.

The messages that I left on your voice mail regarding the tapes were not meant to intimidate you, they were an accurate portrayal of devastating material which makes AT&T look like it has misrepresented itself to the Federal Court, The Appeals Court and the FCC.

The tapes also show that the accounts could easily be distinguished if accounts were moved then had to be moved back. Your "scrambled egg theory" comment to Judge Politan was but another misrepresentation.

The tapes clearly show that 2 years ago I knew that these plans could not go into shortfall. Thus the alleged statement that I was going to seek Bankruptcy Protection because of shortfall makes absolutely no sense!! The fact is I never made such a statement. It was just an AT&T ploy to try to establish that some type of fraud was being perpetuated.



The tapes clearly show that ATN, a fellow aggregator, was waived of all their shortfall charges on their CT 1849. Former AT&T Account manager Joseph Fitzpatrick with 29 years at AT&T inexplicably was able to help Gary Carpenter have all of the shortfall penalties waived.

Synopsis: The tariff allowed the aggregator in the first month of a new CSTPII/RVPP plan to enroll end-users without penalty that were on their own Location Specific Term Plans ( LSTP's)

When a CSTPII/RVPP plan was discontinued (i.e. restructured/upgraded) after June 17<sup>th</sup> 1994 AT&T's interpretation was that the plan was new to become a post June 17<sup>th</sup> 1994 plan.

However, AT&T simultaneously claimed that a restructured plan was not new to prohibit petitioners from enrolling without penalty the end-users that were on LSTP contracts.

The May 24<sup>th</sup> 1996 faxed letter was prior to AT&T's infliction of charges in June 1996. It was being pointed out to AT&T that AT&T never denied petitioners 2.5.7 request to extend its term commitment. Petitioners explained that if it were determined that a restructure was a NEW PLAN than AT&T had been unlawfully prohibiting for 2 years' petitioners from enrolling a tremendous amount of locations that would have satisfied its revenue commitment.

Conversely if it was determined by the Commission that restructures are not new plans then petitioners agree that it should not have been allowed to enroll the end-users without penalty, however that also means the plans continued to be grandfathered under its pre June 17<sup>th</sup> 1994 terms and conditions. AT&T wanted to simultaneously interpret that restructures were both new and not new. AT&T did not deny petitioners request to enact section 2.5.7 due to the fact that AT&T simultaneously interpreted that a discontinued (i.e. restructured/upgraded) CSTPII/RVPP plan is new and not new.

### **Declaratory Ruling Request X**

Did AT&T unlawfully prohibit petitioners from using section 2.5.7 to avoid shortfalls based upon AT&T's interpretation that a discontinued (restructured/upgraded) CSTPII/RVPP EBO plan is a new plan?

### **Declaratory Ruling Request XI**

Given the fact that the 2.5.7 request was a May 1996 objection that was under the FCC's *October 1995 Order* in which changes were made to the discontinuation tariff section, did AT&T violate the FCC's October 1995 Order by not meeting the substantial cause test to get a determination from the FCC as to whether a discontinuance was a new plan or not a new plan that would clarify whether or not end-users on LSTP's could have been enrolled without penalty to increase petitioner's revenue.

Thank you for your consideration and petitioners respectfully ask that the Commission to issue Public Notice to seek public comment to address these declaratory ruling requests.

Sincerely Ray Grimes esq